

**STATE OF MICHIGAN
DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES
BUREAU OF HEARINGS**

In the matter of

Docket No. 2002-685

**Office of Financial and Insurance Services,
Petitioner**

Agency No. 01-919

**v
Kelly A. Darrow,
Respondent**

**Agency: Office of Financial &
Insurance Services**

Case Type: Sanction

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Issued and entered

**this 21st day of August, 2002
by Lauren G. Van Steel
Administrative Law Judge**

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

Appearances: Laurence S. Wood, Attorney at Law, appeared on behalf of Petitioner, Office of Financial and Insurance Services. Neither Respondent, Kelly A. Darrow, nor an attorney or representative on Respondent's behalf, appeared at the hearing.

This proceeding commenced with the filing of a Notice of Hearing dated April 24, 2002, scheduling a hearing for June 17, 2002.

The Notice of Hearing was issued pursuant to a Request for Hearing received by the Bureau of Hearings on April 23, 2002, and an Order for Notice of Hearing and Order to Respond, including Petitioner's Factual Allegation and Complaint, issued by the Commissioner of Financial and Insurance Services (hereafter "Commissioner"), on April 19, 2002, under the provisions of the Insurance Code of 1956, being 1956 PA 218, as

amended [MCL 500.100 *et seq.*] (hereafter "Code"). The Notice of Hearing was mailed to Respondent at the address of 1112 N. Chimney Hill Drive, Dewitt, Michigan 48820.

The hearing was held as scheduled on June 17, 2002. Neither Respondent, nor an attorney or representative for Respondent, appeared at the hearing. Petitioner's representative requested to be allowed to proceed in Respondent's absence pursuant to Section 72 of the Michigan Administrative Procedures Act, 1969 PA 306, as amended, MCL 24.201 *et seq.* (hereafter "APA"). Further, Petitioner's representative stated that in addition to the address noted above, Respondent's address of record with the Office of Financial and Insurance Services is: 819 Brookside Drive, Lansing, Michigan 48917. On that basis, it was determined to continue the hearing and re-serve the Notice of Hearing to Respondent's address of record.

On June 25, 2002, an Amended Notice of Hearing was issued, rescheduling the hearing date to August 8, 2002. The Amended Notice of Hearing was mailed to the parties' last known addresses, including Respondent's address of record, and informed the parties that if they failed to appear at the scheduled hearing, a default might be entered, pursuant to Sections 72 and 78 of the APA. Also, on July 8, 2002, an Order for Continuance was issued, giving notice that the hearing would be continued until August 8, 2002.

On August 8, 2002, the continued hearing was held as scheduled. Neither Respondent, nor an attorney or representative for Respondent, appeared at the hearing. Petitioner's representative requested to be allowed to proceed in Respondent's absence pursuant to Section 72 of the APA. Petitioner's representative also requested that a default be granted for Petitioner pursuant to Section 78 of the APA.

Section 72 of the APA states in pertinent part:

(1) If a party fails to appear in a contested case after proper service of notice, the agency, if no adjournment is granted, may proceed with the hearing and make its decision in the absence of the party.

Further, Section 78 of the APA states in pertinent part:

(2) Except as otherwise provided by law, disposition may be made of a contested case by...default....

Petitioner's motion for default was granted in light of Respondent's failure to appear at the properly noticed hearing, no adjournment having been granted. As a result of the default, the factual allegations contained in Petitioner's Factual Allegation and Complaint, are taken as true. Petitioner did not offer any exhibits for the record or present any witnesses at the hearing.

ISSUES AND APPLICABLE LAW

The issues in this matter are whether Respondent has violated Sections 249(a) and 1204(4) of the Code, which provide in pertinent part as follows:

Sec. 249 For the purposes of ascertaining compliance with the provisions of the insurance laws of the state or of ascertaining the business condition and practices of an insurer or proposed insurer, the commissioner, as often as he deems advisable, may initiate proceedings to examine the accounts, records, documents and transactions pertaining to:

(a) Any insurance agent, surplus line agent, general agent, adjuster, public adjuster or counselor [MCL 500.249(a)].

Sec.1204(4) After examination, investigation, and interrogatories, the commissioner shall license an applicant if the commissioner determines that the applicant is an employee of, or is authorized in writing to represent, an insurer which is authorized to transact insurance in this state, and the applicant possesses reasonable understanding of the

provisions, terms, and conditions of the insurance the applicant will be licensed to solicit, possesses reasonable understanding of the insurance laws of this state, intends in good faith to act as an agent, is honest and trustworthy, possesses a good business reputation, and possesses good moral character to act as an agent. The commissioner shall make a decision on an application within 60 days after the applicant passes the examination or, if the examination has been waived, within 60 days after receipt of a properly completed application and notice of appointment forms [MCL 500.1204(4), as amended by 1986 PA 173, Imd. Eff. July 7, 1986].

Note: Section 1204(4) of the Insurance Code of 1956 was further amended by 2001 PA 228, Eff. March 1, 2002 (after dates applicable to this matter).

FINDINGS OF FACT

Based on the record and the default granted for Petitioner, the undersigned makes the following findings of fact:

2. At all pertinent times, Respondent was a licensed resident agent authorized to transact the business of insurance in the State of Michigan.
3. As a licensee, Respondent knew or had reason to know that Section 249(a) of the Code authorizes the Commissioner to examine the accounts, records, documents and transactions of any insurance agent.
4. Respondent further knew or had reason to know that Section 1204(4) of the Code requires an agent to be honest and trustworthy and possess a reasonable knowledge of the insurance laws of this state.
5. On September 21, 2001, the Consumer Services Section of the Office of Financial and Insurance Services sent Respondent a written inquiry requesting Respondent to provide, within 21 days, information in response to

a written complaint filed by Consumer XXXX XXXX. Respondent failed to respond to the inquiry.

6. On October 17, 2001, the Consumer Services Section sent Respondent a second request for an immediate response to the prior inquiry. Office records show that Respondent failed to respond to the September 21, 2001 and October 17, 2001 inquiries.
7. On January 30, 2002, the Code Enforcement Section of the Office of Financial and Insurance Services offered Respondent a proposed settlement agreement as a means of resolving this matter. The offer advised Respondent of a February 8, 2002 deadline. Respondent has failed to meet this deadline.

CONCLUSIONS OF LAW

The principles that govern judicial proceedings also apply to administrative hearings [8 Callaghan's Michigan Pleading and Practice, §60.48, at 230 (2d ed. 1994)]. The burden of proof in this matter is upon Petitioner to prove, by a preponderance of the evidence, that grounds exist for the imposition of sanctions upon Respondent. Under Section 72 of the APA, there is no requirement to provide a full evidentiary hearing when all alleged facts are taken as true. Smith v Lansing School Dist., 428 Mich 248; 406 NW2d 825 (1987).

Based upon the above findings of fact and the default granted against Respondent, Petitioner has proven by a preponderance of the evidence that Respondent has violated Sections 249(a) and 1204(4) of the Code, as follows:

1. On September 21, 2001, the Consumer Services Section of the Office of Financial and Insurance Services sent Respondent a written inquiry requesting Respondent to provide, within 21 days, information in response to

a written complaint filed by Consumer XXXX XXXX. Respondent failed to respond to the inquiry, contrary to Section 249(a) of the Code. Further, Respondent's conduct constitutes a failure to maintain the standards set forth in Section 1204(4) of the Code.

2. On October 17, 2001, the Consumer Services Section sent Respondent a second request for an immediate response to the prior inquiry. Office records show that Respondent failed to respond to the September 21, 2001 and October 17, 2001 inquiries, contrary to Section 249(a) of the Code. Further, Respondent's conduct constitutes a failure to maintain the standards set forth in Section 1204(4) of the Code.
3. On January 30, 2002, the Code Enforcement Section of the Office of Financial and Insurance Services offered Respondent a proposed settlement agreement as a means of resolving this matter. The offer advised Respondent of a February 8, 2002 deadline. Respondent has failed to meet this deadline, contrary to Section 249(a) of the Code. Further, Respondent's conduct constitutes a failure to maintain the standards set forth in Section 1204(4) of the Code.

RECOMMENDATIONS

Based upon the above findings of fact and conclusions of law, including the default granted against Respondent, the following recommendation is made by the undersigned to the Commissioner:

4. The findings of fact and conclusions of law, including the default granted against Respondent, be adopted in the Commissioner's final decision and order;
5. Immediate revocation of any and all licenses or registrations held by Respondent under the jurisdiction of the Code be ordered by the Commissioner; and
6. Any other sanction or sanctions authorized by law that the Commissioner deems appropriate to the established facts and conclusions of law be ordered by the Commissioner.

EXCEPTIONS

Any Exceptions to this Proposal for Decision should be filed in writing with the Office of Financial and Insurance Services, Division of Insurance, P.O. Box 30220, Lansing, Michigan, within twenty (20) days of issuance of this Proposal for Decision.

Lauren G. Van Steel
Administrative Law Judge